IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 648 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BADIYABHAI MOHYLABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Appellant

MR KT DAVE, APP for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 29/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.R.VORA)

1. This appeal is filed by the appellant through jail against judgement and order dated 24th May 1995 delivered by Additional Sessions Judge, Bharuch, Camp at Rajpipla in Sessions Case No.209/1993. The learned Additional Sessions Judge convicted the present appellant for the charges proved against him under section 302 of IPC and sentenced him for life imprisonment and a fine of Rs.500, in default, to undergo simple imprisonment for three months.

2. The prosecution case, in brief, is to the effect that the incident in question occurred on 16th August 1993 at village Fulsar, Taluka Dediapada, District Bharuch. The complaint was lodged by one Ramjibhai Vestabhai, brother-in-law of the deceased. According to the prosecution case, deceased Mohanbhai Vasava, resident of village Fulsar, was serving as a postman. The incident occurred at about 7 O' clock in the evening. Deceased Mohanbhai was going towards the residence of his uncle Nakadiya Chhaniya for delivering tobacco. At that time the present appellant was coming from village Kanjar. The residences of eye-witnesses Amratbhai Laxmanbhai (PW3), Janiyabhai Vestabhai (PW4), and Ramanbhai Nakadiyabhai Vasava (PW5) are situated near the scene of offence. The present appellant and deceased met in the courtyard of the house of Amratbhai Laxmanbhai (PW3). There was some verbal exchange between them and soon thereafter the accused inflicted knife blow on the left side of the chest of the deceased. The deceased attempted to walk, but he could walk only upto 5 feet, and near a mango tree, he had fallen down. The accused escaped with the knife from the scene of offence. Amratbhai Laxmanbhai (PW3) informed about the incident to Ramjibhai Vestahai, brother-in-law of the deceased who lodged the complaint on 17th August 1993 at Dediapada police station before Jayandrakumar Joshi (PW7), the then PSI, Rajpipla Police Station. Jayendrakuamr Joshi (PW7) investigated and ultimately chargesheet against the present appellant was filed in the court of Judicial Magistrate (First Class), Dediapada for the offence punishable under section 302 of IPC and for the offence punishable under section 135 of the Bombay Police Act. The case was thereafter committed to the Court of Sessions at Bharuch. The Additional Sessions Judge, vide Exh.3, framed charges against the present appellant who pleaded not guilty. In all, learned Additional Sessions Judge examined 7 witnesses on behalf of the prosecution. After recording the statement of the accused under section 313 of the Criminal Procedure Code and hearing prosecution as well as defence, vide impugned judgement

and order dated 24th May 1995 the learned Additional Sessions Judge, Bharuch, in Sessions Case No.209/93, convicted the appellant for the offence proved against him under section 302 of IPC as aforesaid. The appellant was acquitted for the charge levelled against him under section 135 of the Bombay Police Act.

3. Heard Mr. P.M. Vyas who was appointed for the appellant and Mr. K.T. Dave, learned APP for the State. Learned advocate for the appellant advanced the arguments on merits of the case to claim acquittal. However, after reading the evidence along with the learned advocate for the appellant, he almost conceded that the impugned judgement cannot be assailed on the ground that the conviction of the appellant was erroneous. We have carefully gone through the evidence of three eye witnesses viz. (1) Amratbhai Laxmanbhai (PW3-Exh.13), (2) Janiabhai Vestabhai (PW4-Exh.16) and (3) Ramanbhai Nakatiyabhai Vasava (PW5-Exh.17). Map of the scene of offence is produced at Exh.19, which clearly reveals that residences of the abovesaid eye-witnesses are situated within the radius of 10 to 15 feet from the scene of offence. Ramanbhai Vasava (PW4-Exh.17) states that at the time of the incident, he was sitting in his courtyard, while the other two witnesses i.e. Amaratbhai Laxmanbhai (PW3-Exh.13) and Janiabhai Vestabhai (PW4-Exh.16.) were sitting in the courtyard of residence of Amratbhai Laxmanbhai (PW3). All these three witnesses, according to their depositions, witnessed very clearly that the present appellant inflicted knife blow on the left side ofthe chest of the deceased Mohanbhai and thereafter the deceased attempted to walk, but he could walk only for about 5 feet, fell down and died instantaneously. Amratbhai Laxmanbhai (PW3) also states that he informed Ramjibhai Vestabhai who filed the complaint on the next day. The complainant Ramjibhai Vestabhai was examined at Exh.11 as PW1 who stated that on getting the information from Amratbhai Laxmanbhai about the incident, he immediately visited the scene of offence and found that Mohanbhai had a wound on his left chest and had died. His statement clearly corroborates the complaint filed by him which is at Exh.12. In the cross-examination of any of these four witnesses it could not be shown that the eye-witnesses PW3, PW4 and PW5 could not be relied upon. On the contrary it is established on record vide map of scene of offence (Exh.19) that the presence of these three eye witnesses at the scene of offence was natural. We do not find any reason to disbelieve this weighty evidence of prosecution. Therefore so far as the conviction of the appellant is concerned, we do not see any reason to

interfere in the said conclusion of the Additional Sessions Judge.

4. Next it was urged on behalf of the appellant that this is not a case of murder as punishable under section 302 of IPC, but a case falling under section 299 of IPC (culpable homicide) and therefore the nature of offence which is proved would be culpable homicide not amounting to murder punishable under section 304 of IPC. However, learned advocate for the appellant could not point out that how the present set of circumstances fall within any of the exceptions of section 300 of IPC. On the contrary, when we appreciate the evidence of eye-witnesses along with the medical evidence, two distinct propositions emerge out: firstly the appellant inflicted a blow by a knife on the left side of the chest of the deceased and (2) the injury which was inflicted by the appellant was sufficient in the ordinary course of the nature to cause death.

5. The above first proposition is amply proved by eye-witnesses, and the only inference which could be drawn from the same is that the accused had an intention to inflict the injury, which he inflicted on left side of the chest of the deceased. The second proposition mentioned above is proved by the medical evidence wherein Dr. Ashokbhai Parmanad Gupta (PW6 Exh.21) stated that the injury was sufficient in the ordinary course of nature to cause death. He opined that the death of the deceased was caused due to hemorrhage, shock and injury to vital organ i.e. lungs. Therefore by no stretch of reasoning it could be said that this is a case of culpable homicide not amounting to murder. For the aforesaid reasons, only due to the fact that a single blow was given, the case would not fall outside the scope of section 302 of IPC. From the evidence on record it is established that the appellant had requisite intention to cause the injury. Further, it is also clear that the injury which is caused by the appellant was sufficient in the ordinary course of nature to cause death and hence the present set of circumstances as proved by the evidence is covered by section 302 of IPC. Learned Additional Sessions Judge rightly convicted the accused under section 302 of IPC and sentenced him to imprisonment for life.

6. For the aforesaid reasons, we confirm the impugned judgement and accordingly the appeal is dismissed.

[Y.B. BHATT J.]

[J.R. VORA J.]

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